

IDEM  
OFFICE OF  
WATER QUALITY  
APR 11 8 26 AM '06

A305-6-107 Gibson County Commissioners

**CONTRACT FOR SERVICES**

This contract, entered into by and between Indiana Department of Environmental Management (hereinafter referred to as "State") and Gibson County Commissioners (hereinafter referred to as "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. **Tasks of Contractor**

The Contractor shall perform the following tasks and provide the following services relative to this contract for the specific purpose of water quality management. The Contractor shall develop a watershed management plan for two 11-digit Hydrologic Unit Code (HUC) watersheds in the Patoka River watershed, and a Preliminary Engineering Report for water pollution in Gibson County.

A. The Contractor shall develop a preliminary engineering report (PER) recommending solution alternatives for water pollution in Gibson County. The report shall meet the requirements of the State Revolving Loan Fund Program and include:

- Multiple watershed boundaries
- Soil Conditions
- Environmental Issues
- Corporation limits of cities and towns
- Existing treatment facilities
- Demographic analysis
- Preliminary Rate Study and Investment Analysis

The Contractor shall provide two (2) copies of the PER to IDEM.

B. The Contractor shall produce a watershed management plan for two subwatersheds in the Patoka River Watershed (HUCs 05120209070 and 05120209080) in Gibson and Pike Counties. The watershed plan shall include all elements listed in IDEM's "Watershed Plan Checklist" (effective for 2003). The Contractor shall provide two (2) hard copies and one (1) electronic copy compatible with State software of the watershed management plan to IDEM, and make copies available to local libraries, local officials and land use planners in the watershed, and everyone on the plan distribution list. A copy of the draft plan shall be submitted to the State for review and comment at least every six (6) months during the project term (see Exhibit A). A copy of the complete plan shall be submitted to the State for review and approval no less than two (2) months prior to the contract end date. The Contractor shall form a steering committee of stakeholders and interested parties to oversee the development of the watershed

management plan. The Contractor shall provide two (2) copies of the WMP to IDEM.

- C. The Contractor shall develop and conduct public outreach and education activities, including the following:
- Conduct no less than seven (7) quarterly stakeholder meetings, advertised and open to the public, to solicit input in the development of the watershed management plan and one (1) to inform the public about the PER.
  - Post project information and updates on an existing website.
  - Release information to the media on at least a quarterly basis about the project and upcoming meetings.
  - Distribute no less than eight (8) quarterly newsletters to stakeholders.

The following non-budgeted tasks must be completed before final payment. Ten (10) percent of the contracted amount shall be retained until completion and documentation of all tasks:

- D. The Contractor shall prepare and submit written reports to the State with each invoice, on at least a quarterly basis. A total of no less than seven (7) written quarterly progress reports shall be prepared and submitted by the Contractor to the State (see Section 10). The Contractor shall prepare and submit two (2) hard copies and one (1) electronic copy of a final written summary project report to the State by the close of this project (see Section 3). The Contractor shall follow the schedule provided as Exhibit A.

## 2. Consideration

Total remuneration under this agreement shall not exceed \$74,500 (See Exhibit B, Total Estimated Project Expense Budget, which includes reimbursement for services rendered). The Contractor is responsible for providing, in addition to the services remunerated by the State, in-kind services and/or cash match as provided herein of no less than \$0.00.

10% of the contracted amount shall be retained until completion and documentation of all tasks.

## 3. Term

This contract shall be for a period of twenty-four (24) months. The commencement date of this agreement shall be the date the last State signatory signs this agreement (the "Commencement Date") and shall terminate twenty-four (24) months from the commencement date.

## 4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract term, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies thereof shall be furnished at no cost to the State if requested.

**5. Assignment; Successors**

The Contractor binds its successors and assignees to all the terms and conditions of this contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

**6. Audits**

Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

**7. Authority to Bind Contractor**

The signatory for the Contractor represents that he/she has been duly authorized to execute this contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and this Contract is not subject to further acceptance by Contractor when accepted by the State of Indiana.

**8. Changes in Work**

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

In the event the State agrees the project requires a minor change in scope, character or complexity of the work after the work has begun, or a minor change is required in the budget without any change in the total cost of the project, such minor change may be made upon written request from the Contractor's project director and written approval by the States project director but must comply with the terms of this contract and any underlying grant agreement to which the State is the Grantee.

**9. Compliance with Laws**

- A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the State Ethics Commission, or visit the State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6-12.
- C. The Contractor certifies by entering into this Contract, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.
- D. The Contractor warrants that it has no pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under this Contract and any supplements or amendments.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.
- F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

- G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- H. The Contractor affirms that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
- I. Contractor agrees that the State may confirm, at any time, that no liabilities exist to the State, and, if such liabilities are discovered, that State may bar Contractor from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the Contractor is current in its payments on its liability to the State and has submitted proof of such payment to the State.
- J. As required by IC 5-22-3-7:
  - (1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
  - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

#### 10. **Condition of Payment**

All services provided by the Contractor under this contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of federal, state, or local law.

#### 11. **Ownership of Documents and Materials**

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such materials will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

### 12. Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the prior written consent of the State.

### 13. Conflict of Interest

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

1. The individual executing this contract;
2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

B. The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.

C. The Department will not exercise its right of cancellation under section B above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of state employees. The Department may take action, including cancellation of this Contract consistent with an opinion of the Commission obtained under this section.

- D. Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

**14. Continuity of Services - Deleted by agreement of the parties.**

**15. Debarment and Suspension**

- A. The Contractor certifies, by entering into this Contract, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- B. The Contractor certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under this Contract and shall be solely responsible for any paybacks and or penalties that might arise from non-compliance. Contractor shall immediately notify the State if any sub-contractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate work done by the sub-contractor pursuant to this Contract.

**16. Default by the State - Deleted by Agreement of the Parties.**

**17. Disputes**

- A. Should any disputes arise with respect to this Contract, Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within thirty (30) calendar days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner

shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within thirty (30) calendar days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within thirty (30) calendar days after receipt of the Commissioner's decision, a written appeal. Within thirty (30) calendar days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within thirty (30) calendar days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

**18. Drug-Free Workplace Certification**

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in the contractor's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled

substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

- B. Establishing a drug-free awareness program to inform it's employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**19. Employment Option - Deleted by agreement of the parties.**

**20. Force Majeure**

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**21. Funding Cancellation**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

## **22. Governing Laws**

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

## **23. Indemnification**

The Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any. The State shall **not** provide such indemnification to the Contractor.

## **24. Independent Contractor**

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

## **25. Information Technology Accessibility**

All contractors supplying information technology related products and services to the state of Indiana must comply with all ITOC policies and standards. These policies and standards can be found at [http://www.in.gov/itoc/html\\_site/architecture/poli.html](http://www.in.gov/itoc/html_site/architecture/poli.html) and [http://www.in.gov/itoc/html\\_site/architecture/stan.html](http://www.in.gov/itoc/html_site/architecture/stan.html) . Any deviation from the published standards and policies must be approved by ITOC and be supported by a written waiver. In addition, the Contractor shall comply with IDEM policies and procedures. Any deviation from IDEM's policies and procedures must be approved by IDEM in writing.

The Contractor acknowledges and agrees that all hardware, software and services provided to or purchased by the State must be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the Federal Rehabilitation

Act of 1973 (29 U.S.C. 749d), as amended, and adopted by the State of Indiana Information Technology Oversight Commission pursuant to IC 4-23-16-12.

26. **Insurance – Deleted by Agreement of the Parties.**

27. **Key Person(s) - Deleted by Agreement of the Parties.**

28. **Licensing Standards**

The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to pay the Contractor for any services performed when Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, Contractor shall notify State immediately and the State, at its option, may immediately terminate this Contract.

29. **Merger and Modification**

This contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all necessary parties.

30. **Minority and Women Business Enterprise Compliance**

The Contractor shall follow and document the six affirmative steps of the Minority and Women Business Enterprises (MBE / WBE) requirements when soliciting for sub-contractors:

- 1) Place the MBE / WBE vendors on your solicitation list.
- 2) Assure that MBE / WBE vendors are solicited whenever they are potential sources.
- 3) Divide the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MBE /WBEs.
- 4) Establish delivery schedules, where the requirements of work will permit and encourage participation by MBE /WBEs.
- 5) Use the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.
- 6) Require your sub-contractors to use these steps if additional subcontracts are awarded.

The Contractor agrees to comply fully with the provisions of the Contractor's MBE/WBE participation plan.

31. **Nondiscrimination**

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding, the Contractor and its subcontractor, if any, agree that if the Contractor employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Contractor shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of this Contract.

**32. Notice to Parties - Deleted by Agreement of the parties.**

**33. Order of Precedence**

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the State, and (3) attachments prepared by the Contractor.

**34. Payments**

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

**35. Penalties/Interest/Attorney's Fees**

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, the Parties stipulate and agree that any liability resulting from the State of Indiana's failure to make prompt payment shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

**36. Progress Reports**

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

**37. Renewal Option**

This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

**38. Security and Privacy of Health Information - Deleted by agreement of the parties.**

**39. Severability**

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**40. Substantial Performance**

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

**41. Taxes**

The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**42. Termination for Convenience**

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the

Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

43. **Deleted by Agreement of the parties.**

44. **Deleted by Agreement of the Parties.**

45. **Waiver of Rights**

No right conferred on either party under this Contract shall be deemed waived and no breach of this Contract excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right.

46. **Work Standards**

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and Contractor shall grant such request.

47. **Cost Savings Recovery**

The Contractor, after consultation with and written approval of the State, shall apply any cost savings incurred during the contract term in a manner consistent with the terms and conditions of this contract.

48. **Products**

The Contractor shall include the following statement on all material and products developed under this contract.

“This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (enter number\*) to the Indiana Department of Environmental Management. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

See your Project Manager for the assistance agreement number.

**Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the representative, agent, member or officer of the contracting party, that he/she

has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**THE REST OF THIS PAGE IS LEFT BLANK INTENTIONALLY.**

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

**CONTRACTOR:**

By: *N. Sherrell Marginet* Attested by: \_\_\_\_\_  
Printed Name: N. Sherrell Marginet Printed Name: \_\_\_\_\_  
Title: Pres., Gib. Co. Commissioners Title: \_\_\_\_\_  
Date: 3 April 2006 Date: \_\_\_\_\_

**STATE USING AGENCY: Indiana Department of Environmental Management**

*[Signature]*  
Thomas W. Easterly, Commissioner  
Department of Environmental Management  
State of Indiana  
Date: 4/27/06

*Dorinda L. Patterson For*  
Earl A. Goode, Commissioner  
Department of Administration  
State of Indiana  
Date: 5/3/06

*Joseph L. Nye For*  
Charles E. Schalliol, Director  
State Budget Agency  
State of Indiana  
Date: 5/4/06

**Approved for Form and Legality:**  
**Form approval has been granted by the**  
**Office of The Attorney General**  
**pursuant to IC 4-13-2-14.3(e)**  
**on September 1, 2005.**

This Instrument Prepared By: Kathleen Mills, IDEM – Office of Legal Counsel on  
12/5/05 \_\_\_\_\_ (initials)

**EXHIBIT A**

**Schedule for Project Tasks**

The tasks and the associated time periods necessary for the project are as follows:

Contract Commencement through Third Month	Begin watershed management plan (WMP). Begin work on Preliminary Engineering Report (PER). Conduct first public meeting. Release information to the media, create website, and distribute newsletter.
Fourth Month	First quarterly progress report due for work accomplished during the period, if not previously submitted this quarter.
Fourth Month through Sixth Month	Continue working on WMP and PER. Submit draft Watershed Management Plan containing at least the Introduction. Conduct public meeting. Release information to the media, update website, and distribute newsletter.
Seventh Month	Second quarterly progress report due for work accomplished during the period, if not previously submitted this quarter.
Seventh Month through Ninth Month	Continue working on WMP and PER. Conduct public meeting. Release information to the media, update website, and distribute newsletter.
Tenth Month	Third quarterly progress report due for work accomplished during the period, if not previously submitted this quarter.
Tenth Month through Twelfth Month	Continue work on WMP and PER. Submit draft WMP containing at least the Introduction and Problem Identification. Conduct public meeting. Release information to the media, update website and distribute newsletter.
Thirteenth Month	Fourth quarterly progress report due for work accomplished during the period, if not previously submitted this quarter.

Thirteenth Month through Fifteenth Month	Continue working on the WMP and PER. Conduct public meeting. Release information to the media, update website, and distribute newsletter.
Sixteenth Month	Fifth quarterly progress report due for work accomplished during the period, if not previously submitted this quarter.
Sixteenth Month through Eighteenth Month	Continue work on WMP and PER. Submit draft WMP containing at least the Introduction, Problem Identification and Goals & Decisions. Conduct public meeting. Release information to the media, update website, and distribute newsletter.
Nineteenth Month	Sixth quarterly progress report due for work accomplished during the period, if not previously submitted this quarter.
Nineteenth Month through Twenty-first Month	Continue work on WMP and PER. Conduct public meeting. Release information to the media, update website, and distribute newsletter.
Twenty-second Month	Seventh quarterly progress report due for work accomplished during the period, if not previously submitted this quarter.
Twenty-second through Twenty-fourth Month	Complete WMP and PER. Prepare final written summary project report. Submit draft WMP containing all required elements for review and comment prior to finalizing the Plan. Conduct final public meeting. Release information to the media, update website, and distribute newsletter.
Contract Termination Date	Submit to the State two (2) hard copies and an electronic copy of the final written summary project report by the close of this contract (see Section 3. Term).

**EXHIBIT B**  
**Total Estimated Project Expense Budget**

The Contractor will be reimbursed by the State for estimated expenses in the following areas not to exceed the indicated amounts. Payment of up to \$74,500 will be made in arrears, upon submittal of an invoice and progress reports to the State, for the specified purposes. Funds cannot be released by the State until the work has been completed and the appropriate invoice and progress reports have been submitted to the State. The \$74,500 has been identified as the amount necessary to complete the project. Costs in excess of \$74,500 are to be paid by the Contractor with non-federal matching funds not being used as a match for another federal grant.

Type of Expenditure	Amount
Task A	31,200.00
Task B	32,300.00
Task C	11,000.00
<b>TOTAL</b>	<b>\$74,500.00</b>

Each invoice submitted by the Contractor shall be accompanied by a statement indicating that sufficient non-federal funds, either in-kind services or cash, have been expended within the invoice period. Each such invoice shall identify the source and amount of non-federal fund expenditures.

The non-federal funds provided by the Contractor and expended under this contract shall total \$0.00. The Contractor, who may receive contributions toward such in-kind services and/or cash match from watershed volunteers, cost-share participants, and other project partners shall contribute this as either an in-kind services and/or cash match. The Contractor, however, is solely responsible under this contract for such in-kind services and/or cash match.